IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2521 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT ENERGY DEVELOPMENT AGENCY

Versus

SNUIL J AMIN

Appearance:

1. Special Civil Application No. 2521 of 2002

MR AD OZA for Petitioner No. 1

MR MS MANSURI for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 14/08/2002

ORAL JUDGEMENT

1. The petitioner has made a grievance in this petition that on account of some confusion with regard to the appearance of advocate on behalf of the petitioner

before the Labour Court, Baroda the claim of the respondent had remained unchallenged and uncontested and ultimately the award came to be passed against the petitioner on 4th June, 2001 ex-parte.

1.1. It appears that the respondent had filed reference (L.C.V.) no.262/1991 before the Labour Court at Baroda on the ground that he was employed by the petitioner and his service was wrongly terminated on account of animosity entertained by the petitioner against the respondent. He, therefore, prayed that since the order terminating the service was bad in law, the petitioner be directed to reinstate him on his original post with full backwages.

1.2. It appears that at the hearing of the proceedings of the said reference the petitioner had engaged Mr.A.P. Hathi to appear on its behalf. However, his appearance was objected to by respondent and, therefore, the petitioner decided to engage another advocate Mr.K.C. Raval as its advocate. His appearance was also opposed by the respondent. A copy of the award which has been produced by the petitioner in this petition at page 29 shows the name of one Shri J.M. Shah who is neither a office bearer or the representative of the petitioner nor any advocate engaged by the petitioner to defend its case before the Labor Court. Under the circumstances, I find some substance in the say of the petitioner regarding confusion with regard to the appearance of the lawyer before the Labour Court on behalf of the petitioner and in such circumstances, the award was passed against the petitioner ex-parte. From the record of the petition it appears that the petitioner is a Society registered under the provisions of Gujarat Literacy, Scientific and Charitable Societies Registration Act, 1860. It is formed for developing and providing alternate energy sources through wind mills etc. Thus, the petitioner institution is not a private concern but a public enterprise. Considering all these aspects, I am of the opinion that this petition is required to be allowed only upon condition that the petitioner to deposit a sum of Rs.10,000/- within a month from the date of this judgment before the Labour Court. The Labour Court is directed to pay the said amount to the respondent i.e. the original workman after proper verification. The said amount will not be refunded to the petitioner even in case it succeeds before the Labour Court. With this direction the impugned award is quashed and set-aside. The Labour Court is directed to take on its file Reference (L.C.V.) No.262/1991 and permit the parties to lead further evidence from the stage at which the award has been

passed. Both the parties will be entitled to lead further evidence and the Labour Court after taking into consideration the evidence that has already come on record and the evidence that may be now brought on record, decide the reference on its merits and pass appropriate order. The Labour Court shall also permit the petitioner to cross examine the respondent. The petition is allowed. Rule is made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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